VEC has crafted its pre-filed testimony, and its language and tone during the hearings, to imply that it was forced to sell its VYNPC shares, and that it was hoodwinked because the Dkt. 6545 MOU included the RSC. On cross examination, however, VEC clearly confirmed it was not forced to sell its shares; rather, VEC sold its shares because VEC thought that was in its interests at the time. Findings 111-113. Now, having made a decision that, in retrospect, it wishes it could reverse, VEC is trying to blame CVPS and GMP for its own actions. Finding 102.

VEC's own actions in Docket No. 6545 obviate its arguments here. VEC, as a shareholder, as it had previously rejected its power purchase obligations (Finding 105 and fn. 12), intervened in Docket No. 6545, stating in its *Memorandum of Law in Support of Motion to Intervene*, dated October 15, 2001, that:

> "VEC receives dividends from Vermont Yankee as a minority shareholder." *Id.* at 3.
>
> "This new [Power Purchase] agreement will effect changes in the terms and costs for power from Vermont Yankee and in the way Vermont Yankee conducts is business. These changes may significantly impact VEC's expected distribution of dividends, which dividend payment stream has been previously made the basis of VEC's financial projections." *Id.* at 3, 4.
>
> "As a result, *unless VEC obtains a fair value for its shares* in the transaction, the proposed transaction may significantly impact VEC, its cash flow projections, revenue requirements and hence, VEC's member/ratepayers." *Id.* at 4 (emphasis added).

Burlington Electric Department, as a shareholder and power purchaser ("BED"), the Village of Lyndonville, as a shareholder and power purchaser ("LED")(with other municipal power purchasers), and the Washington Electric Cooperative, as a shareholder and power purchaser ("WEC") also intervened, each intervention raising substantially similar concerns as shareholders, with WEC's *Memorandum of Law in Support of Motion to Intervene*, dated

October 15, 2001, referencing "If there is no settlement [with VYNPC/majority owners]..." *Id.* at 8.

While all were clearly entitled to intervene, VEC and the other minority owners each also sought to reach a settlement and "obtain a fair value for its shares." The interventions were granted on October 26, 2001. Docket No. 6545, Order of 10/26/2001 at 4. No mention is made in these interventions of being forced or confronted to sell their shares; clearly, the interventions were intended to leverage a settlement and value for their shares from VYNPC, CVPS and GMP. VEC's attempts now to stand that history on its head should be rejected. VEC made economic decisions to reject its power purchase agreement and to sell its shares, both decisions made in its best interests, and now wishes to reap benefits as if it had not done so. Such an attempt should be rejected.

VEC has no right or entitlement to RSC revenues as a former power purchaser

On December 6, 2001, in the sale docket, the intervening minority power purchasers (as opposed to shareholders) entered a Secondary Purchasers Settlement Agreement, filed with the Board on February 13, 2001, and entered into the record of Docket No. 6545 as Exhibit VY-52. Docket No. 6545, Tr. 4/19/2002 at 174, 175. CVPS, GMP, VEC, BED, LED and WEC (and not VYNPC) were parties to the Secondary Purchaser Settlement Agreement, which terminated the minority power purchasers' obligations to acquire indirectly Vermont Yankee power as of February 28, 2002.[15] Each minority power purchaser, including VEC, BED, LED and WEC, released GMP and CVPS and their affiliated entities (*e.g.*, VYNPC and VELCO) from all claims any of them "now has or ever had or ever will have ... relating to or arising out of the [PPA with

[15] VYNPC was not a party to the Secondary Purchaser Settlement Agreement because the minority power purchasers had contracts directly with VELCO, and VELCO was the seller of VY power it acquired from CVPS and GMP. The minority power purchasers did not have a power purchase agreement with VYNPC or with CVPS and GMP. As part of the Secondary Purchaser Settlement Agreement, VELCO signed an Acknowledgement and Consent, consenting to the termination of the PPA among VELCO and each minority power purchaser.

VELCO], whether known or unknown, suspected or unsuspected, mature, contingent, direct, derivative, subrogated or assigned..." Docket No. 6545, Exhibit VY-52 at 3, section 9.1 ("Release").

Furthermore, each of VEC, BED, LED and WEC agreed to not bring or maintain any claim against CVPS, GMP and their affiliated entities based on any released claims and to indemnify CVPS, GMP and their affiliated entities from any liabilities incurred through any such claim. *Id.* at 4, 5, section 9.2 ("Waiver and Indemnity").

Accordingly, even if VEC demonstrated it had a direct power purchase obligation to VYNPC (which it never had), VEC has nonetheless waived any claim to any sharing of RSC revenues, however such claim is tendered. If VEC does obtain relief as requested in this docket, and CVPS's and GMP's rights to RSC revenues are diminished, VEC has agreed through the Secondary Purchaser Settlement Agreement to indemnify CVPS and GMP for such losses, including attorneys' fees. Once again, VEC stands history on its head, and seeks to avoid the consequences of its own actions. Its claims should be discarded.

VEC has no right or entitlement to RSC revenues as a former shareholder of VYNPC

On December 19, 2001, the intervening minority shareholders (as opposed to power purchasers) entered a Settlement Agreement and Release, filed with the Board on February 6, 2001, and entered into the record of Docket No. 6545 as Exhibit VY-53. Docket No. 6545, Tr. 4/19/2002 at 174, 175. VYNPC, VEC, BED, LED and WEC (and not CVPS and GMP) were parties to the Settlement Agreement and Release, which provided for the repurchase by VYNPC of each minority shareholder's VYNPC stock.[16] Part of the settlement included satisfaction of all of the minority shareholders' rights, including specifically "dissenters' rights," known or

[16] BED owned 14,301 shares; VEC owned 4,213 shares; WEC owned 2,431 shares; and LED owned 2,387 shares. Docket No. 6545, Exhibit VY-52 at Schedule I.

unknown, against VYNPC, whether or not related to the Entergy Transactions (as defined therein). Docket No. 6545, Exhibit VY-53 at 3, section 2.2 ("Satisfaction of Rights"). .

Each minority shareholder, including VEC, BED, LED and WEC, released VYNPC, its affiliated entities, its Sponsors, shareholders, and any present, former and future affiliated entities (*e.g.*, by several references, GMP and CVPS) from all claims any of them "now has or ever had or may ever have in the future, whether known or unknown, suspected or unsuspected, mature, contingent, direct, derivative, subrogated or assigned ... relating to or arising out of" their ownership rights, any representations, and transactions VYNPC, CVPS or GMP proposed to undertake, the Entergy Transactions, dissenters' rights and other activities.

Each minority shareholder specifically acknowledged that it understood that it may have "unknown Minority Owner Claims or...Claims underestimated in amounts or severity,... and each Minority Owner...took this into account in determining the amount and type of consideration to be given..." and that "the consideration ...was bargained for...with the knowledge of the possibility of unknown or underestimated Minority Owner Claims..." Docket No. 6545, Exhibit VY-53 at 3, 4, section 3.1.1 ("Release by Minority Owners").

Furthermore, each of VEC, BED, LED and WEC agreed to not bring or maintain any claim against VYNPC (and the others listed above, which include CVPS and GMP) based on any released claims and to indemnify CVPS, GMP and their affiliated entities from any liabilities incurred through any such claim. *Id.* at 5, section 3.2.1 ("Waiver and Indemnity by Minority Owners").

Finally, the Minority Owners agreed:

> They had fully evaluated risks, received all information requested or believed to be required, they or their financial advisors had reviewed the materials and had undertaken all due diligence believed necessary after consulting with their attorneys. *Id.* at 5, section 3.3 ("Disclosure");

> They would withdraw from Docket No. 6545 and not take any action in any proceeding relating to this Agreement or the Entergy Transactions and taking any position adverse to VYNPC or its shareholders. *Id.* at 5, 6, section 4 ("Regulatory Proceedings');
>
> They have relied on their sole judgment and the advice and recommendations of their independent counsel and financial advisors, they have not been influenced by representations of any party, and THEY ARE ACTING FREELY..., THEY HAVE GIVEN ...CAREFUL CONSIDERATION TO...THE LEGAL RAMIFICATIONS..., AND THAT THEY ARE NOT ACTING OUT OF ANY COMPULSION, DURESS OR COERCION WHATSOEVER. *Id.* at 5, 6, section 7 (Independent Advice of Counsel") (emphasis in original).

(The full text of these provisions is attached, for convenience and accuracy, as Appendix A.)

VEC has knowingly and clearly waived *any* foreseen or unforeseen claim it has as a former shareholder of VYNPC. For VEC to claim before the Board that it is entitled to RSC revenues because it *now* has "unknown Minority Owner Claims or...Claims underestimated in amounts or severity,..." which it "...took this into account in determining the amount and type of consideration to be given..." and that the "the consideration ...was bargained for...with the knowledge of the possibility of unknown or underestimated Minority Owner Claims..." is simply, and at best, disingenuous.[17]

VEC raised none of its instant concerns in 2002, when its leverage was successful. On January 18, 2002, Mr. Burak filed, on behalf of VEC, a *Motion for Permission to Withdraw* from Docket No. 6545. This filing stated: "On Wednesday, January 16, 2002, VEC sold all of its shares of common stock in Vermont Yankee Nuclear Power Corporation back to that company. ... In light of the foregoing, VEC no longer has a substantial interest in this proceeding

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[17] This is no surprise to VEC. VEC, proffering its position in this docket, is clearly aware of this agreement and the promises VEC made in 2001. VEC's counsel in this proceeding is the same person as it was in Docket No. 6545 and during the stock repurchase negotiations among VYNPC, VEC and others at the time.

Furthermore, VEC's counsel read and understood the agreement. As part of the Settlement and Release transaction, counsel for VEC (Burak Anderson & Melloni) provided an opinion to VYNPC, dated January 16, 2002, stating that, among other things, the Settlement Agreement and Release "is the legal, valid and binding obligation of VEC, enforceable against VEC in accordance with its terms."

warranting its continued intervention and participation herein." Docket No. 6545, VEC *Motion for Permission to Withdraw*, dated 1/18/2002 at 1. Nothing in the Motion mentions VEC being forced to sell its shares; rather, the Motion indicates VEC achieved its goals as stated in its Intervention. The Board granted VEC's Motion. Docket No. 6545, Order entered 1/31/2002 at 8.[18]

Accordingly, VEC has waived any honest claim to any sharing of RSC revenues based on its former minority shareholder interest, however justified. If VEC does obtain relief as requested in this docket, and CVPS's and GMP's rights to RSC revenues are diminished, VEC has agreed through the Settlement Agreement and Release to indemnify CVPS and GMP for such losses, including attorneys' fees.[19] VEC's history, and its knowledge of that history, directly contravene and invalidate VEC's illusory arguments here. VEC's request for relief as a former minority owner of VYNPC should be rejected.

VEC has no right or entitlement to unjust enrichment

As discussed immediately above, VEC has no scrupulous claim to RSC revenues through any legal or equitable right or entitlement. Under the Settlement Agreement and Release, VEC received $968,990, BED received $3,289,230, WEC received $559,130, and LED received

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[18] After that date, VEC had many opportunities to cry "foul!" On March 4, 2002, the Dkt. 6545 MOU was signed. Exh. DPS-9. On March 6, 2002, the Dkt. 6545 MOU was filed with the Board. On March 12, 2002, the Board provided an amended schedule to permit discovery and testimony related to the Dkt. 6545 MOU, with hearings in April and briefs in May, 2002. Docket No. 6545, Order entered 6/13/2002 at Appendices vii, viii. At no time during this extended proceeding did VEC, or any other minority purchaser or shareholder, raise any concern relating to their settlement agreements, the Dkt. No. 6545 MOU, the sale or motions to withdraw. See also, Findings 114-116.

On June 13, 2002, the Board issued its principal Order in Docket No. 6545, approving the sale with conditions. Further proceedings elapsed, and the plant was finally sold on August 1, 2002. At no time did VEC, or any other minority purchaser or shareholder, raise any concern relating to their settlement agreements, the Dkt. No. 6545 MOU, the sale or their motions to withdraw.

[19] While VEC argues for the "public power" interests (*see, generally*, Pratt pf. of 2/11/09 at 6, 9 and fn. 2), CVPS believes it is telling that BED, LED and WEC (all never shy in protecting their rights) have not intervened in this docket and are not requesting any right or entitlement to any RSC revenues.

$549,010, at $230 per share. Docket No. 6545, Exhibit VY-53 at Schedule I. VEC received what it bargained for. At no time since then has VEC (or any prior minority owner) offered to refund to VYNPC the purchase price of their shares (with interest) in return for renewed status as a VYNPC owner with an entitlement to RSC revenues.[20] As VEC acknowledged at the hearings, it *would* anticipate a right to RSC revenues *had it remained a shareholder of VYNPC*. Finding 118, above.

To permit VEC or each prior minority owner to receive *both* full and fair compensation for their shares and the other promises in the settlement *and* RSC revenues based upon that freely divested shareholding, would result in clear unjust enrichment to the detriment of CVPS's and GMP's ratepayers.

VI. Conclusion

For the above reasons, CVPS respectfully requests that the Board:

(i) issue an Interim Decision providing guidance to the parties and the Vermont Legislature;

(ii) in such Interim Decision, advise whether, based on the evidence available to the Board at the time of such Interim Decision, ENVY has met the burden to show significant economic benefit and to support the general good of the State;

(iii) find that any "excess revenues" to which CVPS and GMP are entitled under the Revenue Sharing Clause are for the benefit CVPS's and GMP's customers, unless the Board affirmatively finds a different allocation for the benefit of other Vermont utilities' customers is just and reasonable; and

(iv) deny on each basis asserted the request of VEC to receive any portion of excess revenues through entitlement or right.

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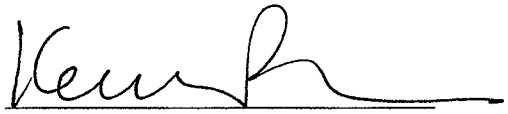
[20] This does not indicate willingness to accept any such offer.

DATED at Rutland, Vermont, this 17th day of July, 2009.

RESPECTFULLY SUBMITTED,

CENTRAL VERMONT PUBLIC SERVICE CORPORATION

By: 

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Appendix A
excerpts from Settlement Agreement and Release,
Docket No. 6545, Exhibit VY-53

2.2 Satisfaction of Rights. Payment of the Repurchase Price by the Company shall be deemed to be in full satisfaction of any and rights of the Minority Owners, known and unknown, arising out of the operation and administration of the Company, including, without limitation, all past acts, omissions, and representations of the company, and any and all present, former and future officers and directors, whether or not related to the Entergy Transactions, and including, without limitation, any and all rights of the Minority Owners under 11A V.S.A. Sections 13.01 et. seq.

3. Release of Claims.

3.1.1 Release by Minority Owners. Effective on the Closing Date and subject only to payment of the Repurchase Price, each Minority Owner, on behalf of itself, its present, former and future affiliated entities, and any and all present, former and future officers, directors, shareholders, partners, employees, creditors, agents, attorneys, successors, heirs and assigns of such Minority Owner and/or any present, former and future affiliated entity of such Minority Owner (collectively the "Minority Owner Releasors"), does hereby release, remise, and forever discharge the Company, its present, former and future affiliated entities, including each of the Sponsors (the Sponsors are specifically identified on **Schedule II** hereof), and any and all present, former or future officers, directors, shareholders, partners, advisory board members, employees, agents, attorneys, successors, heirs and assigns of the Company or any of their present, former and future affiliated entities, including the Sponsors (collectively the "Company Releases"), of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages, and any and all claims and liabilities whatsoever, of every name and nature, both at law and in equity (the "Minority Owner Claims"), that any of the Minority Owner Releasors now has or ever had or may ever have in the future, whether known or unknown, suspected or unsuspected, mature, contingent, direct, derivative, subrogated or assigned, arising out of or against ay of the Company Releasees relating to or arising out of or in connection with: (i) the Company, the nuclear power station that it operates, any and all of the various power purchase agreements between the Company, companies purchasing power from the Company and companies selling power to the Minority Owners that was produced by the Company; (ii) the treatment of the Minority Owners, and of their rights as Minority Owners, by the Company, its officers and directors, and other shareholders of the Company, both individually and collectively, since the date on which the Minority Owners first acquired share of the Company's common stock; (iii) any representations, oral or written, made by any Company Releasee to one or more of the Minority Owners with respect to the Company and its legal or factual affairs; (iv) any financial projections related to the Company or any Company Releasee, or any transaction the Company or any Company Releasee proposed to undertake; (v) any representations to one or more of the Minority Owners made by any Company Releasee in connection with this Agreement; and (vi) the Entergy Transactions, and including, without limitation, any and all right sunder or related to 11A V.S.A. Section 13.01 et seq. (collectively the "Minority Owner Released Claims"). In connection with the agreements set forth in this

Section 3.1.1, each Minority Owner on behalf of itself and its Minority Owner Releasors expressly understands and acknowledges that it is possible that it may have unknown Minority Owner Claims or Minority Owner Claims underestimated in amounts or severity, and each Minority Owner on behalf of itself and its Minority Owner Releasors hereby explicitly states that it took this into account in determining the amount and type of consideration to be given by the Company Releasees in exchange for the giving of the releases set forth in this Section 3.1.1. Each Minority Owner on behalf of itself and its Minority Owner Releasors further explicity states that the consideration contained herein and referred to herein was bargained for among each Minority Owner Releasor and each Company Releasee with the knowledge of the possibility of such unknown or underestimated Minority Owner Claims, and such consideration and covenants were given by each Minority Owner Releasor in a bargained for exchange for a full accord, satisfaction and discharge of all such losses, liabilities, Minority Owner Claims and damages.

3.2.1 Waiver and Indemnity by Minority Owners. Each Minority Owner covenants (a) that neither it nor any of its Minority Owner Releasors on whose behalf it has executed this Agreement, will bring, maintain, cause to be maintained, or assist in maintaining (either individually or in concert with another) any further demand, action, claim, lawsuit, arbitration, or similar proceedings, in any capacity whatsoever, against any of the Company Releasees based upon any of the Minority Owner Released Claims; and (b) that it will indemnify the Company Releasees for and against any and all costs, damages, liabilities, or other expenses (including, without limitation, any attorneys' fees) reasonably incurred by any of the Company Releasees by reason of any violation of clause (a) of this paragraph.

3.3 Disclosure. Each Minority Owner has agreed to sell and deliver its shares to the Company after fully evaluating the risks of this Agreement. Each Minority Owner represents that (i) it has received from the Company all of the information that it either requested or believed to be required with respect to the Released Claims (the "Materials") and (ii) it, or its financial advisor, has investigated the Materials to its satisfaction, and undertaken all of the due diligence it believed was necessary or desirable, after conferring with its legal counsel. Each Minority Owner is experienced with respect to electric utility matters.

4. Regulatory Proceedings. Each Minority Owner will, upon the date of execution of this Agreement, promptly proceed to withdraw from further participation in PSB Docket No. 6545. Moreover, each Minority Owner agrees that it will not (i) intervene, appear, testify or submit any information in any action or proceeding before any governmental authority relating to this Agreement or the Entergy Transactions for the purpose of objecting to, preventing or delaying such transactions or otherwise taking any official position on behalf of the Minority Owner adverse to the Company, its other shareholders or Entergy in connection with such transactions, actions or proceedings; or (ii) cause, solicit or support any other person or entity on behalf of the Minority Owner to do any of the foregoing; provided, however, that this Section 4 does not prohibit trustees, directors, officers, members, commissioners or councilors from acting in their individual capacity with a disclaimer that they are not acting as representatives of a Minority Owner. Subject to the foregoing, the Company shall not oppose each Minority Owner being

permitted to appear, in a non-party capacity, to testify or submit information in any such action or proceeding for the purpose of stating that the settlement contemplated by this Agreement is in the best interests of its ratepayers.

7. Independent Advice of Counsel. Each Party represents and declares that in executing this Agreement it relies solely upon its owner judgment, belief and knowledge and the advice and recommendations of its own independently chosen legal counsel and financial adviser(s) concerning the nature, extent and duration of its rights and claims hereunder and that, except as provided herein, it has not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any Party or by any persons representing any Party. THE PARTIES FURTHER REPRESENT AND DECLARE THAT THEY HAVE READ THIS AGREEMENT, THAT THEY ARE ACTING FREELY IN ENTERING INTO THIS AGREEMENT, THAT THEY HAVE GIVEN THOUGHTFUL AND CARFUL CONSIDERATION TO SAME AND TO THE LEGAL RAMIFICATIONS THEREOF AND THAT THEY ARE NOT ACTING OUT OF ANY COMPULSION, DURESS OR COERCION WHATSOEVER.